

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

JESSICA DRAKE
46 Lincoln Street
Bloomington, Ohio 43106

Plaintiff,

v.

ABERCROMBIE & FITCH CO.
HEALTH BENEFITS PLAN
c/o/ Plan Administrator
Abercrombie & Fitch Co.
6301 Fitch Path
New Albany, Ohio 43054,

Defendant.

Judge JUDGE WATSON

MAGISTRATE JUDGE KING
Magistrate Judge _____

COMPLAINT

For her Complaint against the Defendant, Abercrombie & Fitch Co. Health Benefits Plan,
Plaintiff Jessica Drake states as follows:

Parties

1. The Plaintiff, Jessica Drake, is a dependent of a former employee of Abercrombie & Fitch and is, by virtue of that relationship, a beneficiary of the Abercrombie & Fitch Co. Health Benefits Plan.

2. The Abercrombie & Fitch Co. Health Benefits Plan (the "Plan") is an employee welfare benefit plan subject to the terms of the Employee Retirement Income Security Act ("ERISA"). The Plan provides, *inter alia*, medical benefits for employees of Abercrombie & Fitch and dependents of those employees.

Jurisdiction and Venue

3. The Plaintiff's claims arise under ERISA. The Court has jurisdiction under 29 U.S.C. §1132.

4. The Plan is administered, in part, in Franklin County, Ohio. Venue, therefore, is proper in the Eastern Division of the Southern District of Ohio.

Facts Common To All Claims

5. At the time relevant to this action, Jack Drake was employed by Abercrombie & Fitch. By virtue of his employment, Jack Drake and his dependents became eligible for coverage under the terms of the Plan.

6. Plaintiff Jessica Drake is the wife of Jack Drake, is his dependent, and became eligible for coverage as a beneficiary of the Plan.

7. For much of her life, Plaintiff Drake was morbidly obese. Beginning in 2006 Drake pursued an aggressive weight loss program and, as a result of her efforts, lost approximately 200 pounds.

8. The weight loss left Plaintiff Drake with an abundance of excess skin, in particular an abdominal panniculus extending nearly to her feet. The panniculus impedes several of Plaintiff Drake's bodily functions, including walking and toileting, and produces serious and recurring infections in the folds of the skin tissue.

9. On February 27, 2008, Plaintiff Drake applied to the Plan for approval for a panniculectomy, a surgical procedure deemed medically necessary by her physicians for the removal of excess skin tissue.

10. The Plan denied Plaintiff Drake's application, stating that it considered the requested procedure to be cosmetic and, therefore, not covered by the Plan.

11. Plaintiff Drake timely appealed, but her appeal was denied.
12. Plaintiff Drake has exhausted her administrative remedies.

Count I – For Benefits

13. The foregoing paragraphs are incorporated by reference as if fully rewritten herein.

14. Drake brings this action under 29 U.S.C. §1132(a)(1)(B) and seeks an award of benefits.

15. The medical procedure Drake has requested is not cosmetic, but rather is a medically necessary procedure that is covered under the terms of the Plan.

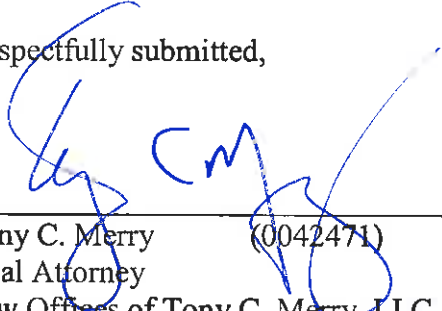
16. The Plan acted arbitrarily and capriciously in denying Drake's request for benefits by, *inter alia*, failing to consider the views of Drake's treating physicians and misapplying the Plan's exclusion for cosmetic procedures.

17. Drake is entitled to the benefits that she seeks.

WHEREFORE, the Plaintiff, Jessica Drake, demands judgment in her favor and seeks an order as follows:

- A. Determining that the panniculectomy that Drake has requested is a covered procedure under the terms of the Plan and is not subject to any exclusion;
- B. Directing the Plan to authorize and to pay for the panniculectomy that Drake has requested;
- C. Awarding prejudgment and post-judgment interest;
- D. Awarding attorney's fees and the costs of this action; and
- E. Awarding such other and further relief as the Court finds to be equitable and just.

Respectfully submitted,



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